

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**FELIX FERNANDO NIEVES**

Claimant

VS.

**CENTURY ROOFING and  
LRF AND ANTONIO FIGUEROA**

Respondents

AND

**KANSAS BUILDING INDUSTRY WORKERS  
COMPENSATION FUND and  
ST. PAUL FIRE & MARINE INSURANCE CO.**

Insurers

Docket No. 1,027,435

**ORDER**

Claimant appealed the June 5, 2006, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

On January 16, 2006, claimant fell from a roof and injured his legs and back. In the June 5, 2006, Preliminary Decision the Judge held:

At a preliminary hearing March 27, 2006, the matter of the injuries of claim[ant] from a fall in Kansas at work for Mr. Figueroa and Century Roofing was considered. It appears the former [is] alleged to be the actual employer, had a St. Paul Insurance policy so it was continued so an appearance could be arranged first.

Reconvened on June 1, 2006, St. Paul presented a Workers Compensation policy limiting it's [sic] coverage to Missouri employees and injuries only (Ex. 4 [sic])[.] For preliminary hearing purposes it appears necessary to implead the Workers Compensation Fund in this claim, as lack of insurance coverage will be a primary defense of the other respondents.

Otherwise it appears Claimant does need further medical treatment by a suitable provider and the adverse parties should be prepared to designate one and

pay some temporary total disability at least from the date of the preliminary hearing application (April 20, 2006).

Claimant contends Judge Foerschler erred. In his application for review, claimant asserts he presented sufficient evidence to establish that LRF and Antonio Figueroa and St. Paul Fire & Marine Insurance Company (St. Paul) are responsible for this accident under the Workers Compensation Act. In the alternative, claimant argues Century Roofing and its insurance fund should be held responsible as a statutory employer. Accordingly, claimant requests the Board to modify the June 5, 2006, Preliminary Decision.

None of the parties filed timely briefs or letters of argument with the Board. Consequently, the Board does not have the benefit of the various parties' contentions. Presumably, the issues before the Board are:

1. At the time of accident was claimant working for Antonio Figueroa or any company that he operated?
2. In the alternative, was claimant a statutory employee of Century Roofing?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes the Preliminary Decision should be modified to assess the benefits awarded claimant against Century Roofing and its insurance fund.

On January 16, 2006, claimant, who is 19 years old, fell from the roof of a house in Overland Park, Kansas, and injured his legs and back. An ambulance was called, which took claimant to an emergency room. Claimant has since begun treatment with Dr. Jeffrey MacMillan for his back and Dr. Roger Hood for his legs.

Based upon the limited evidence presented thus far, when the accident occurred claimant was working for Antonio Figueroa and his brother (who was identified by claimant's attorney as Leonel Figueroa). Claimant was hired to work 12 hours per day, five days per week, for \$100 per day. The accident occurred on claimant's second or third day at work.

Sometime after the accident, the Figueroa brothers visited claimant at his home and told him to get rid of his attorney as they did not have insurance. At the June 1, 2006, preliminary hearing, St. Paul appeared and introduced a workers compensation insurance policy issued to Leonel Ramiro Figueroa. St. Paul contends, however, that policy only provides coverage for accidents that occur in Missouri.

Century Roofing, however, was also present at the residence where claimant fell. The parties do not dispute that Canadian West, Incorporated, doing business as Century Roofing, was the general contractor at the house where claimant fell and that Century Roofing had contracted with the Figueroa brothers to work at that site.

They are the general contractor for this particular site. They contracted with these independents, the Figueroa brothers, to do work for them. So we have an independent contractor situation. The Figueroa brothers did procure coverage, they provided a certificate of coverage to my clients saying that they did have coverage. They went ahead and worked. And as we've heard today, the injured worker, Mr. Nieves, was hired by this independent contractor. He was never hired by Century Roofing. Century Roofing is insured by the Kansas Building Industry Work Comp Fund and, Your Honor, that's a group-funded insurance pool, set up, organized for the State of Kansas.<sup>1</sup>

Based upon the above, the Board concludes claimant was employed by a subcontractor of Century Roofing. Consequently, Century Roofing and its insurance fund are responsible for claimant's workers compensation benefits as provided by K.S.A. 44-503(a). That statute provides:

**Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed. For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor. (Emphasis added.)**

In conclusion, claimant is considered by statute to be an employee of Century Roofing. Therefore, it is appropriate to enter the preliminary hearing award against Century Roofing and its insurance fund.

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<sup>1</sup> P.H. Trans. (June 1, 2006) at 26-27.

**WHEREFORE**, the Board modifies the June 5, 2006, Preliminary Decision and assesses the benefits awarded against Century Roofing and its insurance fund.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2006.

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BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant  
Roy T. Artman, Attorney for Century Roofing and its Insurance Fund  
Clayton T. Fielder, Attorney for LRF and Antonio Figueroa and St. Paul  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director